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By: **Delegate Glassman**

Introduced and read first time: February 6, 2004

Assigned to: Economic Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 9, 2004

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2                                   **Consumer Protection - Prizes and Awards Conditioned on Purchase or Sales**  
3                                   **Promotion**

4 FOR the purpose of altering the civil ~~penalty~~ penalties for a merchant that notifies  
5 another person by any means, as part of an advertising scheme or plan, that the  
6 other person has won a prize, received an award, or has been selected or is  
7 eligible to receive anything of value if the other person is required to purchase  
8 goods or services, pay any money to participate in, or submit to a sales  
9 promotion effort; establishing enhanced civil penalties for violations with  
10 respect to certain individuals; and generally relating to a merchant that notifies  
11 another person that the person has won a prize or award if the person is  
12 required to purchase goods or services or pay money in connection with a sales  
13 promotion effort.

14 BY repealing and reenacting, without amendments,  
15 Article - Commercial Law  
16 Section 13-305  
17 Annotated Code of Maryland  
18 (2000 Replacement Volume and 2003 Supplement)

19 BY repealing and reenacting, with amendments,  
20 Article - Commercial Law  
21 Section 13-410  
22 Annotated Code of Maryland  
23 (2000 Replacement Volume and 2003 Supplement)

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article - Commercial Law**

4 13-305.

5 (a) This section does not apply to:

6 (1) Trading stamps, as defined by § 13-101 of the Business Regulation  
7 Article;

8 (2) State lottery tickets issued under the authority of Title 9, Subtitle 1  
9 of the State Government Article;

10 (3) Retail promotions, not involving the offer of gifts and prizes, which  
11 offer savings on consumer goods or services including "one-cent sales",  
12 "two-for-the-price-of-one-sales", or manufacturer's "cents-off" coupons; or

13 (4) Games of skill competition not involving sales promotion efforts.

14 (b) A person may not notify any other person by any means, as part of an  
15 advertising scheme or plan, that the other person has won a prize, received an award,  
16 or has been selected or is eligible to receive anything of value if the other person is  
17 required to purchase goods or services, pay any money to participate in, or submit to  
18 a sales promotion effort.

19 (c) In addition to the exceptions provided in subsection (a) of this section,  
20 subsection (b) of this section does not prohibit the offer of prizes requiring the person  
21 to purchase other goods and services if the retail price of the prize offered does not  
22 exceed the greater of:

23 (1) \$40; or

24 (2) The lesser of:

25 (i) 20% of the purchase price of the goods or services that must be  
26 purchased; or

27 (ii) \$400.

28 (d) The exception provided in subsection (c) of this section does not apply to  
29 the offer of a prize requiring the person either to pay any money to participate in or to  
30 submit to a sales promotion effort, or to a prize promotion involving the award of  
31 prizes by chance.

32 (e) When a person offers prizes in a sales promotion effort relating to the sale,  
33 lease, or rental of real property not prohibited by this section, that person shall  
34 disclose to each offeree, in writing, clearly and conspicuously:

- 1           (1)     That the purpose of the sales promotion effort is to solicit the  
2 purchase, lease, or rental of real property;
- 3           (2)     The exact number of each prize offered in each category to be made  
4 available during the sales promotion;
- 5           (3)     The manufacturer's suggested retail price or comparable retail price  
6 of each prize offered;
- 7           (4)     (i)     If calculable in advance, the odds against winning each prize; or  
8                   (ii)    If not calculable in advance, a statement to that effect, or that  
9 the odds of winning will be determined by the number of entries;
- 10          (5)     Whether all prizes offered will be awarded and when a determination  
11 of winners will be made; and
- 12          (6)     If prizes with retail prices or monetary values in excess of \$100 are  
13 offered, where and when a list of winners of those prizes can be obtained.
- 14   (f)     Where provisions of law or regulations relating to the awarding of prizes in  
15 the sale, lease, or rental of real property exist, including § 11A-119 of the Real  
16 Property Article, the provisions of those laws or regulations shall apply if the  
17 provisions are more stringent than this section.
- 18   (g)     If a person offers a contest, sweepstakes, or other sales promotion effort  
19 not prohibited by this section, involving the award of prizes by chance, that person  
20 shall disclose to each offeree in writing:
- 21          (1)     The exact number of each prize offered in each category to be made  
22 available during the contest, sweepstakes, or sales promotion;
- 23          (2)     The manufacturer's suggested retail price, or comparable retail price,  
24 of each prize offered;
- 25          (3)     If calculable in advance, the odds against winning each prize and if  
26 not calculable in advance, a statement that the odds of winning will be determined by  
27 the number of entries;
- 28          (4)     Whether all prizes offered will be awarded and when a determination  
29 of winners will be made;
- 30          (5)     What, if any, conditions must be met in order to receive a prize;
- 31          (6)     If prizes with retail prices or monetary values in excess of \$100 are  
32 offered, where and when a list of winners of those prizes can be obtained; and
- 33          (7)     That in order to receive the prize offered in the sales promotion you  
34 may not be required to:
- 35               (i)     Purchase goods or services;

- 1 (ii) Pay any money; or
- 2 (iii) Where applicable, submit to a sales promotion effort.

3 (h) If a person offers a contest, sweepstakes, or other sales promotion effort  
4 not prohibited by this section, not involving the award of prizes by chance, that  
5 person shall disclose to each offeree in writing:

6 (1) The manufacturer's suggested retail price, or comparable retail price  
7 of each prize offered;

8 (2) What, if any, conditions must be met in order to receive a prize; and

9 (3) That in order to receive the prize offered in the sales promotion you  
10 may not be required to:

11 (i) Purchase goods or services, unless the retail price of the prize is  
12 within the limits set by subsection (c) of this section;

13 (ii) Pay any money; or

14 (iii) Where applicable, submit to a sales promotion effort.

15 (i) The disclosures shall appear on the first page of the prize notification  
16 document.

17 13-410.

18 (a) (1) ~~[A] EXCEPT AS PROVIDED IN PARAGRAPH (2) PARAGRAPHS (2) AND~~  
19 ~~(3) OF THIS SUBSECTION~~, A merchant who engages in a violation of this title is subject  
20 to a fine of not more than \$1,000 for each violation.

21 (2) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, A  
22 MERCHANT WHO ENGAGES IN A VIOLATION OF § 13-305(B) OF THIS TITLE IS SUBJECT  
23 TO A FINE OF NOT MORE THAN \$5,000 FOR EACH VIOLATION.

24 (3) A MERCHANT WHO ENGAGES IN A VIOLATION OF § 13-305(B) OF THIS  
25 TITLE WITH RESPECT TO AN INDIVIDUAL WHO IS AT LEAST 65 YEARS OLD OR A  
26 DISABLED INDIVIDUAL IS SUBJECT TO A FINE OF NOT MORE THAN \$10,000 FOR EACH  
27 VIOLATION.

28 (b) ~~A (1)~~ EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A  
29 merchant who has been found to have engaged in a violation of this title and who  
30 subsequently repeats the same violation is subject to a fine of not more than \$5,000  
31 for each subsequent violation.

32 (2) A MERCHANT WHO HAS BEEN FOUND TO HAVE ENGAGED IN A  
33 VIOLATION OF § 13-305(B) OF THIS TITLE WITH RESPECT TO AN INDIVIDUAL WHO IS  
34 AT LEAST 65 YEARS OLD OR A DISABLED INDIVIDUAL AND WHO SUBSEQUENTLY  
35 REPEATS THE SAME VIOLATION IS SUBJECT TO A FINE OF NOT MORE THAN \$10,000  
36 FOR EACH VIOLATION.

1 (c) The fines provided for in subsections (a) and (b) of this section are civil  
2 penalties and are recoverable by the State in a civil action or an administrative cease  
3 and desist action under § 13-403(a) and (b) of this subtitle or after an administrative  
4 hearing has been held under § 13-403(d)(3) and (4) of this subtitle.

5 (d) The Consumer Protection Division shall consider the following in setting  
6 the amount of the penalty imposed in an administrative proceeding:

7 (1) The severity of the violation for which the penalty is assessed;

8 (2) The good faith of the violator;

9 (3) Any history of prior violations;

10 (4) Whether the amount of the penalty will achieve the desired deterrent  
11 purpose; and

12 (5) Whether the issuance of a cease and desist order, including  
13 restitution, is insufficient for the protection of consumers.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
15 October 1, 2004.